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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 3rd January 2013

No. 68—li-I(BH)-8/2005-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th September 2012 in I. D. Case No. 59 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Central Electrical Division, Balasore and their workman Shri Laxmidhar Singh, Mayurbhanj was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 59 OF 2005

Dated the 28th September 2012

Present:

S. A. K. Z. Ahamed, OSJS. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between:

The Executive Engineer, .. First Party—Management
Central Electrical Division, Balasore.

And

Shri Laxmidhar Singh (dead), .. Second Party—Workman
Substituted by his legal heir Kartik Singh
S/o Late Laxmidhar Singh,
At Bhulagudia, P.O. Shyamakhunta,
Dist. Mayurbhanj.

Appearances :

Shri G. K. Mohapatra	.. For the First Party—Management
Shri Kartik Singh	.. Second Party workman himself

AWARD

The Government of Odisha in the Labour & Employment Department (presently the Labour & E.S.I. Department) in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 9090—li-I(BH)-8/2005-LE., dated the 27th October 2005 :—

“Whether the termination of services of deceased Shri Laxmidhar Singh, Lineman-C with effect from the 2nd April 1980 by the Management of Central Electrical Division, Balasore vide their Order No. 3442, Dt. 10-7-2003 is legal and/or justified ? If not, what relief Shri Singh is entitled to ?”

2. It is pertinent to mention here that during pendency of reference and before appearance of the workman, the workman Laxmidhar Singh died and his legal heir Shri Kartik Singh was allowed to contest the case. Accordingly, the legal heir of the deceased workman filed claim statement simply stating that the dismissal of his father i.e. the deceased workman Laxmidhar Singh, Lineman-C is not legal or justified and therefore, he is entitled to the relief of service benefits.

3. On the other hand, the management filed written statement denying the claim of the deceased workman. The specific stand taken by the management is that due to wilful absence from duty and disobedience of order the deceased workman was charge-sheeted followed by an enquiry and on conclusion thereof he was dismissed from service. It is stated that despite service of notice on the deceased, he did not participate in the enquiry as a result the disciplinary authority taking into consideration the gravity of the misconduct, removed him from employment. Although it is admitted that a representation of the deceased was received to allow him to join in his duty but the same having been received after passing of the dismissal order no action was taken on the said representation. The first party in the circumstance has prayed to answer the reference in its favour.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the termination of services of Shri Laxmidhar Singh, Lineman-C with effect from the 2nd April 1980 by the Management of Central Electrical Division, Balasore vide their Order No. 3442, Dt. 10-7-2003 is legal and/or justified ?
- (ii) If not, what relief Shri Singh is entitled to ?”

5. On behalf of the deceased, his heir Shri Kartik Singh has been examined to be the sole witness and on behalf of the management, its Executive Engineer (Elect.) is examined as M.W. No. 1. Ext. 1 is marked on behalf of the workman and Exts. A to K have been marked on behalf of the management.

FINDINGS

6. *Issue No. (i)*—The evidence of W.W. No. 1, who is the legal heir of the deceased, needs no elaboration as he has no direct knowledge regarding the misconduct committed by the deceased workman and the action taken thereon by the management. In cross-examination W.W. No. 1 has stated that being the legal heir he has filed the affidavit for getting benefit under the law.

7. It is a case of dismissal of the deceased workman for certain misconducts. Therefore, it is to be thrashed out whether the management has been able to establish the charges against the deceased workman so as to justify its action.

It is admitted by the management through its witness M.W. No. 1 that the deceased workman was working as a Lineman-C under the Executive Engineer (Elect.), Construction Division, Balasore on 24-12-1973 after being transferred from B.E.D., Baripada, that he was working under the S.D.O. (Electrical), Construction, Balasore which was under the administrative control of the Executive Engineer, C.E.D., Balasore (first party) and that while working as such the deceased workman remained absent unauthorisedly for which the S.D.O., Electrical Construction, Balasore reported against him vide his letter No. 932, Dt. 12-12-1979 (Ext. A). It is also in the evidence of M.W. No. 1 that pursuant to such reporting by the S.D.O., the Executive Engineer, C.E.D., Balasore issued letter No. 3599, Dt. 29-12-1979 (Ext. B) asking the deceased workman to join his duty within seven days of receipt of Ext. 3 or else action as deemed fit would be taken against him. He has further stated that in spite of the direction contained in Ext. B the deceased workman did not join his duty within the stipulated period. Referring to Ext. C, M.W. No. 1 has stated that on 2-4-1980 the deceased workman turned up to join his duty with a Medical Certificate in support of his illness which was forwarded to the first party vide letter No. 288, Dt. 7-4-1980 seeking a clarification as to whether the joining report of the deceased workman can be entertained or not owing to the fact that he had not reported within the stipulated period as contained in Ext. B. It is further deposed to by M.W. No. 1 that basing on the report Ext. C, a charge sheet was framed vide Ext. D asking the deceased workman to submit his explanation and on receiving the same the deceased submitted his explanation on 16-4-1982. Ext. J reflects that the explanation (which has not been exhibited by the first party in this proceeding) having been found unsatisfactory, an enquiry was ordered to be conducted against the deceased workman and accordingly the deceased was intimated to participate in the enquiry. Ext. E is a copy of the notice of the Enquiry Officer addressed to the deceased workman to take part in the enquiry with an instruction that on his failure to participate in the enquiry it will be conducted *ex parte*.

No evidence is however forthcoming as to whether any enquiry was conducted after issuing the notice Ext. E and consequently basing on such enquiry the order of dismissal (Ext. K) was

passed. Neither the management has examined the Enquiry Officer nor exhibited the day-to-day proceedings recorded by the Enquiry Officer and the statements of the witnesses recorded by him in course of the enquiry. It is, therefore, difficult to conclude that the misconducts alleged against the deceased workman have been established. Even if the deceased workman had not participated in the enquiry, the Enquiry Officer ought to have taken steps by asking the management to prove the charges against the deceased workman. As it seems, no enquiry has at all been conducted against the deceased and moreover without looking to the genuine difficulty of the deceased workman when he had reported for duty with a Medical Certificate on 2-4-1980, the S.D.O. sought for a clarification from the first party and thereby did not allow him to join his duty. The dismissal of the deceased workman in the circumstance does not appear to be either legal or justified. It is, therefore, concluded that without there being a proper enquiry the first party has imposed the severest punishment of dismissal on the deceased workman. Hence, the action of the management is held to be neither legal nor justified.

Issue No. (i) is answered accordingly in favour of the deceased workman.

8. *Issue No. (ii)*—In view of the finding on Issue No. (i), it is felt appropriate to award compensation in favour of the deceased workman as he is no more to be reinstated in service. Accordingly, a compensation of Rs. 50,000 (Rupees fifty thousand only) is awarded in favour of the deceased workman which should be paid to his legal heir(s) within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
28-9-2012
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
28-9-2012
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

J. DALANAYAK
Under-Secretary to Government